

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Michael Neumann
Application Number: 10/566,379
Filing Date: 01/26/2006
Group Art Unit: 3637
Examiner: Andres F. Gallego
Title: COOLING DEVICE WITH CERAMIC STORAGE
COMPARTMENTS

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
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APPEAL BRIEF

Pursuant to 37 CFR 1.192, Appellant hereby files an appeal brief in the above-identified application. This Appeal Brief is accompanied by the requisite fee set forth in 37 CFR 1.17(f).

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 8-21 are currently pending in the present application and are on appeal. Claims 8-21 have been rejected. Claims 1-7 have been canceled.

(4) STATUS OF AMENDMENTS

No amendments have been filed after the Final Rejection dated January 6, 2010.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

The invention relates to a cooling device 1 including an inner chamber 4 provided with at least one placement device 6, 7, 9 for items to be placed such as food. The placement device includes a shelf area 14 made of a ceramic material. See page 3, lines 1-15.

The placement device may be fabricated in one piece from the ceramic material. Additionally, the placement device may be constructed as at least one of a support plate, a door compartment or as a pull-out box. In one embodiment, the shelf area contains pigments. The ceramic material may be provided with a glaze. In this context, at least one set of pigments may be added to the glaze. See page 3, lines 1-36.

The cooling device may include at least two of the placement devices, each differently colored. See page 3, lines 32-36.

The invention also relates to a cooling device 1 including an inner chamber 4 provided with at least two placement devices 6, 7, 9 for items to be placed such as food. A first one of the placement devices is formed as a support plate 6. The support plate is made of a non-glass

ceramic material and includes a shelf area 14 made of the non-glass ceramic material. A second one of the placement devices is formed as a pull-out box 7 including a shelf area 14' made of the non-glass ceramic material. See page 3, lines 1-24.

Specific Support for Independent Claims

8. A cooling device, comprising:

an inner chamber provided with at least one placement device for items to be placed such as food, said placement device includes a shelf area made of a ceramic material. [page 3, lines 1-15]

15. A cooling device, comprising:

an inner chamber provided with at least two placement devices for items to be placed such as food [page 3, lines 1-10 and Fig. 1], a first one of said placement devices formed as a support plate [page 3, lines 4-6], said support plate made of a non-glass ceramic material [page 3, line 12, and page 1, lines 8-16] and including a shelf area made of said non-glass ceramic material [page 3, lines 12-15, and page 1, lines 8-16], and a second one of said placement devices formed as a pull-out box [page 3, lines 4-6], said pull-out box including a shelf area made of said non-glass ceramic material [page 3, lines 17-20, and page 1, lines 8-16]

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A) Whether claims 15, 16 and 19 are unpatentable under 35 U.S.C. § 112, first paragraph.

B) Whether claims 8-10 are unpatentable under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,113,206 to Melson et al.

C) Whether claims 11 and 14 are unpatentable under 35 U.S.C. §103(a) over Melson in view of U.S. Patent No. 5,179,045 to Aitken.

D) Whether claims 12 and 13 are unpatentable under 35 U.S.C. §103(a) over Melson in view of U.S. Patent No. 6,165,590 to Tagaki et al.

E) Whether claims 15-20 are unpatentable under 35 U.S.C. §103(a) over Melson in view of "The Period Arts Fan Company" and Tagaki.

F) Whether claim 21 is unpatentable under 35 U.S.C. §103(a) over Melson in view of “The Period Arts Fan Company,” Tagaki and Aitken.

(7) ARGUMENT

A). *Claims 15, 16 and 19 are not unpatentable under 35 U.S.C. § 112, first paragraph.*

With regard to claims 15, 16 and 19, the Office Action contends that reference to the ceramic material being “non-glass ceramic” amounts to new matter. Appellant respectfully disagrees. In the background section, the specification describes disadvantages of placement devices in current cooling devices that are made of plastics, glass and/or metal. In particular, with regard to glass, the specification describes a disadvantage of the prior art is that “placement devices made of glass are very sensitive to impact.” The specification further provides that an object of the invention is to provide a cooling device that overcomes the disadvantages of the prior cooling devices. Appellant respectfully submits that those of ordinary skill in the art would readily appreciate that a non-glass ceramic material is intended/inherent in the description since the express object is to overcome disadvantages of prior glass placement devices. Indeed, the opposite conclusion is directly contrary to the objectives of the invention. Appellant thus respectfully submits that reference to non-glass ceramic material is fully supported in the original description and those of ordinary skill in the art would be enabled to make and/or use the invention as defined in the claims. Reversal of the rejection is requested.

B) *Claims 8-10 are not unpatentable under 35 U.S.C. §102(b) as being anticipated by Melson.*

Melson discloses a refrigerator including a refrigerator shelf having an overflow volume by virtue of its shape. In particular, Melson discloses curved refrigerator shelves that represent a spherical surface segment. The convex refrigerator shelf of Melson’s preferred embodiment is produced using “conventional vending technologies” such as gravity sagging.

Melson describes that the shelf is made of “glass or glass ceramic.” Melson is thus limited to a glass material shelf.

In the “Response to Arguments” section in the final Office Action, the Examiner contends that “the features upon which appellant relies . . . are not recited in the rejected claim(s).” Appellant acknowledges that limitations from the specification are not read into the claims. It is well settled, however, that Appellant is entitled to be his own lexicographer. It would be clear to those of ordinary skill in the art that reference to “ceramic material” in view of the specification is necessarily distinguishable from the glass or glass ceramic disclosed in the Melson patent. As noted above, an alternative definition is contrary to the express objectives of the invention.

Appellant thus respectfully submits that the rejection of claim 8 is misplaced. With regard to dependent claims 9 and 10, Appellant submits that these claims are allowable at least by virtue of their dependency on claim 8 and also because they recite additional patentable subject matter.

Reversal of the rejection is respectfully requested.

C) *Claims 11 and 14 are not unpatentable under 35 U.S.C. §103(a) over Melson in view of Aitken.*

With regard to claims 11 and 14, Appellant submits that the Aitken patent does not correct the deficiencies noted above with regard to Melson. Additionally, as noted previously, Melson teaches away from any modification to the claimed ceramic material since the required shape of the shelves disclosed in Melson are particularly suited for glass or glass ceramic. Appellant thus submits that these claims are allowable at least by virtue of their dependency on an allowable independent claim and because they recite additional patentable subject matter. Reversal of the rejection is requested.

D) *Claims 12 and 13 are not unpatentable under 35 U.S.C. §103(a) over Melson in view of Tagaki.*

With regard to claims 12 and 13, Appellant submits that the Tagaki patent similarly does not correct the deficiencies noted above with regard to Melson and claim 8. As such,

Appellant submits that these dependent claims are allowable at least by virtue of their dependency on an allowable independent claim and because they recite additional patentable subject matter. Reversal of the rejection is requested.

E) *Claims 15-20 are not unpatentable under 35 U.S.C. §103(a) over Melson in view of “The Period Arts Fan Company” and Tagaki.*

With regard to claim 15, the Office Action recognizes that Melson lacks at least the claimed placement devices being made of a non-glass ceramic material. In this context, however, the Office Action contends that “Period Arts” discloses such subject matter with regard to shelving comprised of porcelain. In this context, the Office Action contends that porcelain is a type of non-glass ceramic. Appellant respectfully disagrees. Porcelain is indeed a ceramic material, which is made by heating raw materials. “The toughness, strength and translucence of porcelain arise mainly from the formation of glass and the mineral mullite . . . [at high temperatures].” See <http://en.wikipedia.org/wiki/Porcelain>. See also, <http://www.wisegeek.com/what-is-porcelain.htm> (“Porcelain starts with a pale clay such as china white, which has small, tight grains that are further ground so that they are even. Materials like glass, feldspar, and granite are ground with the clay before water is added to the mixture so that it can be worked.”). Appellant thus respectfully submits that the combination of Melson and “Period Arts” still falls short of the claimed invention.

Still further, as also noted above, Melson in fact teaches away from any modification to the claimed ceramic material since the required shape of the shelves disclosed in Melson are particularly suited for glass or glass ceramic.

Appellant thus respectfully submits that the rejection of claim 15 is misplaced.

Claims 16-20 depend from claim 15 and are allowable for the same reasons and also because they recite additional patentable subject matter.

Reversal of the rejection are respectfully requested.

F) *Claim 21 is not unpatentable under 35 U.S.C. §103(a) over Melson in view of “The Period Arts Fan Company,” Tagaki and Aitken.*

With regard to claim 21, Appellant submits that Tagaki and Aitken do not correct the deficiencies noted above with regard to the combined references and claim 15. As such, Appellant submits that claim 21 is allowable at least by virtue of its dependency on an allowable independent claim and because it recites additional patentable subject matter. Reversal of the rejection is requested.

(8) CONCLUSION

In view of the foregoing discussion, Appellant respectfully requests reversal of the Examiner's rejections.

Respectfully submitted,

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CLAIMS APPENDIX

1 – 7 (Cancelled)

8. (Rejected) A cooling device, comprising:
an inner chamber provided with at least one placement device for items to be placed
such as food, said placement device includes a shelf area made of a ceramic material.
9. (Rejected) The cooling device according to claim 8, including said placement device
fabricated in one piece from said ceramic material.
10. (Rejected) The cooling device according to claim 8, including said placement device
constructed as at least one of a support plate, a door compartment or as a pull-out box.
11. (Rejected) The cooling device according to claim 8, wherein said shelf area contains
pigments.
12. (Rejected) The cooling device according to claim 8, including said ceramic material
provided with a glaze.
13. (Rejected) The cooling device according to claim 12, wherein at least one set of
pigments is added to said glaze.
14. (Rejected) The cooling device according to claim 8, including at least two of said
placement devices, each differently coloured.
15. (Rejected) A cooling device, comprising:
an inner chamber provided with at least two placement devices for items to be placed
such as food, a first one of said placement devices formed as a support plate, said
support plate made of a non-glass ceramic material and including a shelf area made of

said non-glass ceramic material, and a second one of said placement devices formed as a pull-out box, said pull-out box including a shelf area made of said non-glass ceramic material.

16. (Rejected) The cooling device according to claim 15, including said two placement devices, each fabricated in one piece from said non-glass ceramic material.
17. (Rejected) The cooling device according to claim 15, including a third placement device constructed as at least one of a door compartment.
18. (Rejected) The cooling device according to claim 15, wherein said shelf areas contain pigments.
19. (Rejected) The cooling device according to claim 15, including said non-glass ceramic material provided with a glaze.
20. (Rejected) The cooling device according to claim 19, wherein at least one set of pigments is added to said glaze.
21. (Rejected) The cooling device according to claim 15, wherein said two placement devices are each differently coloured.

EVIDENCE APPENDIX

None

Attorney Docket No.: 2003P01109WOUS

RELATED APPEALS APPENDIX

None